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DEPARTMENT OF COMMERCE

International Trade Administration

[Application 12-00004]

EXPORT TRADE CERTIFICATE OF REVIEW

ACTION: Notice of Application for an Export Trade Certificate of Review Colombia Poultry Export Quota, Inc. (COLOM-PEQ)

SUMMARY: The Office of Competition and Economic Analysis, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (“Certificate”). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. §§ 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified

in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR § 325.6(a) require the Secretary to publish a notice in the *Federal Register*, identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments:

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked “privileged” or “confidential business information” will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021X, Washington, D.C. 20230, or transmitted by email at etca@trade.gov.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as “Export Trade

Certificate of Review, application number 12-00004.” A summary of the application follows.

Summary of the Application:

Applicant: Colombia Poultry Export Quota, Inc.
c/o DTB Associates, LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, DC 20006
(202) 684-2512

Application No.: 12-00003

Date Deemed Submitted: May 16, 2012

Members (in addition to applicant): Colombia Poultry Export Quota, Inc. (hereinafter, “COLOM-PEQ”) was formed by USA Poultry and Egg Export Council (USAPEEC) representing the poultry exporting industry of the United States of America and by Federacion Nacional de Avicultores representing the Colombian poultry industry. Their respective addresses are:

USA Poultry & Export Council
2300 West Park Place Boulevard, Suite 100
Stone Mountain, GA 30087

Federacion Nacional de Avicultores

Calle 67 No. 7-35 Oficina 610

Bogota, Colombia

COLOM-PEQ seeks a Certificate of Review to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets.

Export Trade

Products:

COLOM-PEQ plans to export poultry products as described in the Agricultural Tariff Schedule of the Republic of Colombia, as appended to the TPA, and including the following Colombian HTS Codes: 0207.1300.A – leg quarters [fresh or chilled] curators traseros [frescos o refrigerados]; 0207.1400A – leg quarters [frozen] (curators traseros [congelados]); 1602.3200.A – leg quarters, seasoned and frozen (curators traseros, sazonados y congelados).

Export Markets

Poultry products for which awards will be made will be exported to the Republic of Colombia.

1. Purpose.

Colombia – U.S. Poultry Export Quota, Inc. (“COLOM-PEQ”) will manage on an open tender basis the tariff-rate quotas (TRQs) for poultry products granted by the Republic of Colombia to the United States under the terms of the TPA or any amended or successor agreement providing for Colombian TRQs for poultry from the United States of America.

Specifically, the TRQs for poultry products are set forth at Paragraph 6 of Appendix I of the General Notes of Colombia, Annex 2.3 to the TPA. COLOM-PEQ also will provide for distributions of the proceeds received from the tender process based on exports of poultry products (“the TRQ System”) to support the operation and administration of COLOM-PEQ and fund market access maintenance, market promotion and market competitiveness improvement, educational, scientific and technical projects for the respective benefits of the poultry industry of the United States and of the Sector Representative Association (“*sector gremial representativo*”) for poultry in the Republic of Colombia as defined in Article 2.6 of the Colombian Ministry of Agriculture and Rural Development Decree No. 0728 of April 13, 2012.

2. Implementation.

A. Administrator. COLOM-PEQ shall contract with a third party Administrator who shall bear responsibility for administering the TRQ System, subject to general supervision and oversight by the Board of Directors of COLOM-PEQ.

- B. Membership.** COLOM-PEQ's members under this certificate are the USA Poultry and Egg Export Council (USAPEEC) and Federacion Nacional de Avicultores, the Sector Representative Association ("*sector gremial representativo*") for poultry in the Republic of Colombia.
- C. Open Tender Process.** COLOM-PEQ shall offer TRQ Certificates for duty-free shipments of chicken leg quarters to the Republic of Colombia solely and exclusively through an open tender process with certificates awarded to the highest bidders ("TRQ Certificates"). COLOM-PEQ shall hold tenders in accordance with tranches at least four times each year. The award of TRQ Certificates under the open tender process shall be determined solely and independently by the Administrator in accordance with Section I without any participation by the members of COLOM-PEQ or the COLOM-PEQ Board of Directors.
- D. Persons or Entities Eligible to Bid.** Any person or entity incorporated or with a legal address in the United States of America shall be eligible to bid in the open tender process.
- E. Notice.** The Administrator shall publish notice ("Notice") of each open tender process to be held to award TRQ Certificates in the *Journal of Commerce* and, at the discretion of the Administrator, in other publications of general circulation within the U.S. poultry industry or in the Republic of Colombia. The Notice will

invite independent bids and will specify (i) the total amount (in metric tons) that will be allocated pursuant to the applicable tender; (ii) the shipment period for which the TRQ Certificates will be valid; (iii) the date and time by which all bids must be received by the Administrator in order to be considered (the “Bid Date”); and (iv) a minimum bid amount per ton, as established by the Board of Directors, to ensure the costs of administering the auction are recovered. The Notice normally will be published not later than 30 business days prior to the first day of the tender process and will specify a Bid Date that is at least ten (10) business days after the date of publication of the Notice. The Notice will specify the format for bid submissions. Bids must be received by the Administrator not later than 5:00 p.m. EST on the Bid Date.

- F. Contents of Bid.** The bid shall be in a format established by the Administrator and shall state (i) the name, address, telephone and facsimile numbers, and email address of the bidder; (ii) the quantity of poultry products bid, in an amount stated in metric tons or fractions thereof; (iii) the bid price in U.S. dollars per metric ton; and (iv) the total value of the bid. The bid form shall contain a provision that must be signed by the bidder, agreeing that (i) any dispute that may arise relating to the bidding process or to the award of TRQ Certificates shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules; and (ii) judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

G. Performance Security. The bidder shall submit with each bid a performance bond, irrevocable letter of credit drawn on a U.S. bank, cashier's check, wire transfer or equivalent security, in a form approved and for the benefit of an account designated by the Administrator, in the amount of \$50,000 or the total value of the bid, whichever is less. The bidder shall forfeit such performance security if the bidder fails to pay for any TRQ Certificates awarded within five (5) business days. The bidder may choose to apply the performance security to the price of any successful bid, or to retain the performance security for a subsequent open tender process. Promptly after the close of the open tender process, the Administrator shall return any unused or non-forfeited security to the bidder.

H. Confidentiality of Bids. The Administrator shall treat all bids and their contents as confidential. The Administrator shall disclose information about bids only to (a) an external auditor retained for the purpose of auditing auction results and proceeds; (b) an authorized neutral third party or (c) an authorized government official of the United States or of the Republic of Colombia and only as necessary to ensure the effective operation of the TRQ System. However, after the issuance of all TRQ Certificates from an open tender process, the Administrator shall notify all bidders and shall disclose publicly (i) the total tonnage for which TRQ Certificates were awarded, and (ii) the average price and lowest price per metric ton of all successful bids.

- I. Award of TRQ Certificates.** The Administrator shall award TRQ Certificates for the available tonnage to the bidders who have submitted the highest price conforming bids. If two or more bidders have submitted bids with identical prices, the Administrator shall divide the remaining available tonnage in proportion to the quantities of their bids, and offer each TRQ Certificates in the resulting tonnages. If any bidder declines all or part of the tonnage offered, the Administrator shall offer that tonnage first to the other tying bidders, and then to the next highest bidder.
- J. Payment for TRQ Certificates.** Promptly after being notified of a TRQ award and within the time specified in the Notice, the bidder shall pay the full amount of the bid, either by wire transfer or by certified check, to an account designated by the Administrator. If the bidder fails to make payment within five (5) days, the Administrator shall revoke the award and award the tonnage to the next highest bidder(s).
- K. Delivery of TRQ Certificates.** The Administrator shall establish an account for each successful bidder in the amount of tonnage available for TRQ Certificates. Upon request, the Administrator will issue TRQ Certificates in the tonnage designated by the bidder, consistent with the balance in that account. The TRQ Certificate shall state the delivery period for which it is valid.

L. Transferability. TRQ Certificates shall be freely transferable except that (i) any TRQ Certificate holder who intends to sell, transfer or assign any rights under that Certificate shall publish such intention on a website maintained by the Administrator at least three (3) business days prior to any sale, transfer or assignment; and (ii) any TRQ holder who sells, transfers or assigns its rights under a TRQ Certificate shall provide the Administrator with notice and a copy of the sale, transfer or assignment within three (3) business days.

M. Deposit of Proceeds. The Administrator shall cause all proceeds of the open tender process to be deposited into interest-bearing accounts in a financial institution approved by the COLOM-PEQ Board of Directors.

N. Disposition of Proceeds. The proceeds of the open tender process shall be applied and distributed as follows:

- i. The Administrator shall pay from tender proceeds, as they become available, all operating expenses of COLOM-PEQ, including legal, accounting and administrative costs of establishing and operating the TRQ System, as authorized by the Board of Directors.
- ii. Of the proceeds remaining at the end of each year of operations after all costs described in (i) above have been paid –

1. Fifty percent (50%) shall be distributed to fund market access, market promotion, educational, scientific and technical projects to benefit the United States poultry industry. COLOM-PEQ shall accept proposals for the funding of projects approved by resolution of the Board of Directors of USAPEEC.
2. Fifty percent (50%) shall be distributed to fund direct market development or market competitiveness improvement projects to benefit the Sector Representative Association ("*sector gremial representativo*") for poultry in the Republic of Colombia in accordance with Article 2.6 of the Colombian Ministry of Agriculture and Rural Development Decree No. 0728 of April 13, 2012.

O. Arbitration of Disputes. Any dispute, controversy or claim arising out of or relating to the TRQ System or the breach thereof, including *inter alia*, a Member's qualification for distribution, interpretation of documents, or of the distribution itself, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

P. Confidential Information. The Administrator shall maintain as confidential all export documentation or other business sensitive information submitted in

connection with application for COLOM-PEQ membership, bidding in the open tender process, or requests for distribution of proceeds, where such documents or information has been marked “Confidential” by the person making the submission. The Administrator shall disclose such information only to another neutral third party or authorized government official of authorized government official of the United States or of the Republic of Colombia and only as necessary to ensure the effective operation of the TRQ System or where required by law (including appropriate disclosure in connection with the arbitration of a dispute).

Q. Annual Reports. COLOM-PEQ shall publish an annual report including a statement of its operating expenses and data on the distribution of proceeds, as reflected in the audited financial statement of the COLOMPEQ TRQ System.

_June 15, 2012

Date

Joseph E. Flynn, Director

Office of Competition and

Economic Analysis

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